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SUMMARY RECORD OF THE 1073rd MEETING

Held at the Palais des Nations, Geneva,
on Monday, 15 July 1991, at 10 a.m.

Chairman: Mr. POCAR

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The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Second periodic report of Madagascar (CCPR/C/28/Add.13)

1. The CHAIRMAN welcomed the members of the Malagasy delegation, namely Ambassador Laurent Radaody Rakotondravao, Permanent Representative of Madagascar to the United Nations and other international organizations at Geneva and Vienna, and Mr. Pierre Verdoux, Assistant Representative, who would present the second periodic report of Madagascar before replying to questions from the members of the Committee.

2. Mr. RADAODY RAKOTONDRAVAO (Madagascar) said that Madagascar had acceded to the International Covenant on Civil and Political Rights and to its Optional Protocol in 1970, and in 1978 had submitted its initial report, which described the overall, the institutional and the legal framework in Madagascar. On account of exceptional circumstances, of which the Human Rights Committee had been notified in due time, the Malagasy delegation was now presenting a document that actually comprised the second and third periodic reports, due to have been submitted respectively in 1983 and in 1988. The Malagasy authorities had wondered whether it was worthwhile to submit their report at a time when major institutional changes were under way in Madgascar, but as the last meeting between Madgascar and the Committee had been more than 12 years earlier, they had deemed it worthwhile to inform the Committee of the developments that had taken place during that long period.

3. A far-reaching review of the 1975 Constitution was currently under way in Madagascar, at the initiative of the Government and political parties, and would lead to the adoption of a new institutional framework. Consequently, some of the questions that might be asked, relating to the Constitution, for example, might be somewhat out of date. However, consideration of the periodic report before the Committee and of the documents annexed to it would be far from futile, as the report described the efforts made by Madagascar over more than a decade to comply with its obligations under the Covenant, in spite of serious economic and political setbacks for which it could not always be held responsible.

4. Anyone reading the report would undoubtedly be struck by the stability of Madagascar's fundamental legislation, as well as by the progress made in the actual implementation of the provisions of the Covenant since 1977, when the initial report had been submitted. The history of the last 15 years showed that the 1975 Constitution had not swept away the past and that the institutions set up by it had been able to operate satisfactorily, as they had proved capable of adapting to the changes made necessary by circumstances, while remaining faithful to the spirit of justice, independence and social progress that had inspired the Constitution.

5. The Democratic Republic of Madagascar had not adopted the single-party system: from the very beginning, elections at all levels, contested by many candidates and parties, had been the basis of political activity, and universal suffrage had constituted the sole source of legitimacy. Many

elections had been held in recent years, including two presidential elections which had also been contested by many candidates and parties. The Constitutional High Court, which ensured that elections were conducted properly and the Constitution observed, had been increasingly active, and the judiciary had been strengthened by the reform of the Supreme Court and of the supervisory body established within the Court. Press censorship had been completely abolished, a new investment code adopted and many State enterprises transferred to the national or foreign private sector.

6. The People's National Assembly of Madagascar had just adopted the draft amendments to the Constitution, which had been submitted by the Government on the initiative of the President of the Republic and which concerned most of the 1975 text (over 70 articles). Particularly noteworthy were the complete absence of any reference to socialism and the reforms affecting institutions such as the Supreme Council of the Revolution, the Military Committee for Development and the Constitutional High Court.

7. As that step had not yet received consensus, the Government and the opposition were still debating the content and form of future changes, as the conclusion to the Charter of the Malagasy Socialist Revolution clearly stated that to debate achievements and errors, what was to be continued and strengthened, and what was to be done away with would be determined on the basis of practical experience.

8. The CHAIRMAN invited the Malagasy delegation and the Committee to address the list of issues to be taken up in connection with the consideration of the second periodic report of Madagascar which had been distributed to them and to proceed section by section.

I. Constitutional and legal framework within which the Covenant is implemented (article 2 (2) and (3))

(a) Please provide information on the organizational structure, competence and powers of the decentralized communities.

(b) Please provide information on decisions, if any, taken by the Constitutional High Court or the Supreme Court in which reference is made to the Covenant.

(c) What measures have been taken to guarantee the independence of the judiciary, especially with regard to the supervisory body established within the Supreme Court? (See paragraph 37 of the report).

(d) What follow-up action has been taken as a result of views adopted by the Committee under the Optional Protocol with regard to Madagascar?

9. Mr. RADAODY RAKOTONDRAVAO (Magadascar) said that the structure established by the 1975 Constitution was no longer valid and was currently being amended, through a far-reaching process of revision that was not yet complete. The decentralized communities were in fact traditional structures - the fokonolona - that had been integrated into Madagascar's administrative, legal and institutional framework in 1975. They were assemblies of individuals that managed their own affairs on a voluntary basis and whose

members were elected by universal suffrage in the case of the basic communities, then by restricted suffrage in the case of higher-level assemblies, resulting in a pyramid-shaped structure. Thus, above the village or district assemblies there were unions established at the town level, followed by smaller unions at a level corresponding to that of the department or district, and finally, at the highest level, provincial unions. Those communities were managed by an elected executive committee assisted by a popular council, which was also elected.

10. Under the 1975 Constitution, all state powers in the sphere of administration or law and order were vested in the decentralized communities, which were the basic units of society. Thus in theoretical terms, the communities possessed full powers. However, in practice it had been necessary to provide them with legal, administrative and economic assistance and experience had shown that they had not fully exercised the powers vested in them. The frequent criticisms made during the period covered by the report had led to the current review of the structure of the decentralized communities. It had been suggested by some that part of their powers for the maintenance of law and order and administration should be taken away from them; others on the other hand proposed that their economic and financial powers, and in particular the power to raise taxes should be reinforced. The debate was not yet over and the position of the Malagasy authorities had not yet been fully defined. It was expected that it would take approximately one year to introduce the new structures of the decentralized communities.

11. With regard to item I (b) of the list, he said that to his knowledge there were no decisions of the Constitutional High Court or of the Supreme Court in which an explicit reference had been made to the Covenant.

12. Item I (c) concerned measures taken to guarantee the independence of the judiciary, especially with regard to the supervisory body established within the Supreme Court. In that regard, he said that the independence of the judiciary was expressly recognized by article 83, paragraph 3, of the new Constitution and that, under the 1975 Constitution, the Supreme Court was responsible for monitoring and guaranteeing that independence. Recently, in 1989, the Supreme Court had been reformed (see paras. 35 et seq. of the report, (CCPR/C/28/Add.13)), by the establishment of a supervisory or monitoring body within the Court, made up of professional judges elected by the People's National Assembly, and thus completely independent of the Executive.

13. The question of the independence of the judiciary was currently solely of academic interest, as the Supreme Court was undergoing further reform - as part of the current constitutional review - that would continue throughout the year. The final form of the Supreme Court had not yet been determined. However, in view of Madagascar's tradition of juridical continuity and stability, what had been achieved in recent years was certain to be preserved, if not reinforced; Madagascar's body of law was in fact the outcome of a process of stratification over the years that had been little affected, as far as fundamental, civil and political rights were concerned, by changes of regime. Thus, for example, the 1975 Constitution had not abolished many

provisions that had existed in the 1960s and even during colonial times. The reform currently under way consisted of a rationalization and, in so far as possible, a modernization of current legislation.

14. He was not sure of the meaning of the question put in item I (d) (what follow-up action has been taken as a result of views adopted by the Committee under the Optional Protocol with regard to Madagascar?). Madagascar which had acceded to the Covenant and to the Protocol, had always recognized the right of individuals to address the Human Rights Committee. Over the previous 10 years there had indeed been cases involving foreigners, including mercenaries, who had been imprisoned in Madagascar; however, they had been released long before, and to his delegation's knowledge, there were no longer any political prisoners or persons who had resorted to the procedure laid down in the Optional Protocol whose cases were still pending.

15. The CHAIRMAN pointed out that the question put in paragraph (d) did not concern communications currently being considered by the Committee, as that procedure was confidential; nothing relating thereto was said in public meetings while the procedure was in progress and any relevant details were requested from States parties in writing. The question asked actually concerned communications whose consideration by the Committee was over and had concluded with a finding that there had been a violation of one of the articles of the Convenant, with regard to which the Committee wished to receive information on the measures subsequently adopted by the State party to remedy the situation.

16. Mr. RADAODY RAKOTONDRAVAO (Madagascar) said that the Malagasy authorities had already replied in writing to a letter from the Committee, that all the persons concerned had been released and that the situation had returned to normal. However, his delegation was prepared to provide a more detailed reply.

17. The CHAIRMAN gave the floor to members of the Committee who wished to make observations.

18. Mr. NDIAYE first of all expressed his pleasure at resuming the dialogue with the Malagasy delegation. He noted the major changes taking place in Madagascar, in the form of reduced State involvement and extensive privatization at the instigation of certain creditors, in par'icular the International Monetary Fund and the World Bank. His concern was precisely with the impact of that new policy upon the implementation of the Covenant. Even though the structural adjustment policy might be regarded as relevant mainly to economic, social and cultural rights, civil and political rights were not unaffected by it.

19. His second question concerned electoral disputes. The report stated that the Constitutional High Court was responsible for disputes concerning legislative and presidential elections (CCPR/C/28/Add.13, paras. 22 and 30) although it was not specified who could refer such matters to the Court. In the case of presidential elections, it was probably the candidates themselves; however, in the case of legislative elections was that right accorded to the parties or the candidates?

20. Lastly, in respect of question (d), he thought it advisable to provide the Malagasy delegation with the text of the decisions containing the Committee's views, so that it could make inquiries and inform the Committee on the steps taken. A precise reply would be deeply appreciated.

21. Mr. AGUILAR URBINA said that he, too, was happy to resume a dialogue that had begun 13 years earlier and had since been interrupted, the more so because Madagascar had experienced considerable changes that could lead to greater respect for civil and political rights. The Committee had learned that major changes had been made to the 1975 Constitution which, it was to be hoped, would be reflected in greater protection for the rights proclaimed in the Covenant.

22. His first question was the same as that put by Mr. Ndiaye concerning the implications of the new economic policies adopted in Madagascar for the implementation of the Covenant. It was an issue that arose in most developing countries that adopted similar measures, generally at the instigation of the World Bank or the International Monetary Fund. Coming from a third-world country himself, he thought it important to have an exchange of views on the subject.

23. He also inquired about the relationship between the Charter of the Malagasy Socialist Revolution and the Constitution (CCPR/C/28/Add.13, paras. 14 and 16), particularly in the light of the reforms currently under way. He wished in particular, to know which of the two texts took precedence in the event of conflict. In the same connection, the impression he had drawn from reading the report (CCPR/C/28/Add.13, paras. 15, 16 and 42) had been that both the executive and the legislative branches were able to legislate. Accordingly, he requested further details on the ranking of the various types of legislation (regulations, ordinances, etc.) in the Malagasy legal hierarchy and asked in particular what was the standing of international treaties in general and of the Covenant in particular, and whether the latter took precedence over Malagasy law. He also asked whether the Covenant was directly applicable under Malagasy law and whether it could be invoked before the courts if one of the rights it proclaimed were violated. Lastly, he asked for further information on those amendments to the Constitution that could have a positive or negative impact on the exercise of human rights.

24. Mr. SADI took note of the explanation given for the delay in the submission of the second periodic report of Madagascar. He congratulated Madagascar on ratifying the Optional Protocol to the Covenant, a courageous step that few developing countries had dared to take. He was also impressed by the still incomplete reform process that had taken place in Madagascar. Not only was the Constitution to be amended, but changes were also to be made to such institutions as the Constitutional High Court and the Supreme Court. In view of all the changes under way, there were grounds for wondering whether the present report should not be followed by another, to be submitted by Madagascar when it was in a position to provide the Committee with precise information on the points of particular interest to it with regard to the implementation of the Covenant.

25. The question of greatest concern to him involved a phenomenon characteristic of many developing countries, i.e. the fact that the executive

could legislate by means of regulations (report, para. 15) and that it could also issue legislative ordinances between sessions of the People's National Assembly (para. 16). He asked what guarantees existed to ensure that such legislative acts complied with the Covenant and the Constitution. The Constitutional High Court's mandate was to monitor laws and legislation adopted by the Executive. He asked whether the Malagasy delegation could give examples of cases in which the Court had found an ordinance or a regulation to be contrary to the Covenant.

26. Mr. FODOR expressed his satisfaction at the presence of the Malagasy delegation after a 12-year silence. The report had been prepared in accordance with the Committee's guidelines, a fact that should be emphasized. However, the "special circumstances" and the period of "economic and social difficulties" experienced by the country, invoked in paragraph 8 could account for, but not justify such a delay; it seemed on the contrary, that it was during such difficult periods that a State party should submit its report, as the Committee could then, better than at any other time, provide it with assistance.

27. It was admittedly too early for a detailed report on the reforms undertaken in Madagascar, but he was sure that the Malagasy delegation would already be in a position to indicate the overall thrust of the new Constitution. He inquired in particular whether there were plans to eliminate the dual system of basic legislation, comprising the Charter of the Malagasy Socialist Revolution and the Constitution, and to draw up a single instrument containing both the general principles guaranteeing the exercise of human rights and legislative provisions. A single instrument would facilitate the task of the authorities and of the courts.

28. With regard to the power to monitor constitutionality vested in the Constitutional High Court, he noted from paragraph 23 of the report that such power only extended to draft laws, legislative proposals and draft decrees, and not to laws already in force. He wondered whether the Constitutional High Court was also competent to ascertain the constitutionality of laws that had already been promulgated and whether, in the long period since the initial report, there had been cases in which it had been required to take a decision on the constitutionality of a legislative text that was in force.

29. With regard to the Supreme Court, he asked why the people's courts provided for in articles 83 and 84 of the Constitution had not yet been set up, as was indicated in paragraph 34 of the report. Was it for financial reasons or because the Government of Madagascar, guided by the far from conclusive experience of other countries in that sphere, had preferred to postpone such measures?

30. There were still a number of special courts in Madagascar, and it had asked whether there were grounds for maintaining them. In particular, it was difficult to see why the ordinary courts should not be competent to try the type of cases mentioned in paragraph 104 of the report. Moreover, it would be useful to know what monitoring body supervised those special courts and how they operated.

31. The explanation provided by the Malagasy delegation for the action taken as a result of views adopted by the Committee under the Optional Protocol was not completely satisfactory. In 1990, the Committee had decided to send to States parties concerned by a decision on the merits of a case, adopted under the Optional Protocol, a note verbale asking what action it had taken on the decision. The deadline of 4 June 1991 had then been set for the submission of replies to the Committee. However, no reply had so far been received from Madagascar. Following up a decision did not merely involve, for example, releasing political detainees. In its views, it was not infrequent for the Committee to request the State party to compensate the victims of a violation. It was such measures that the Committee was interested in knowing about. From a more general angle, he asked what types of remedy and redress were available to the victims of violations, and whether they had to initiate proceedings to obtain redress, or whether, on the contrary, the Government automatically took the appropriate measures.

32. Mr. MAVROMMATIS thanked the Malagasy delegation for having taken into account the Committee's request, to consider together the second and third periodic reports. For precisely that reason, he found it difficult to understand why the Malagasy authorities stated in paragraph 12 of the report that they were "ready to prepare two reports on the periods in question". However, he was confident that the representative of the State party would easily be able to account for that apparent contradiction.

33. At first sight, document CCPR/C/28/Add.13 gave rise to a number of questions in respect of the Covenant, although it was undeniable that Madagascar was experiencing a period of change, and it was likely that many of the factors described in the report would be amended. It was to be hoped that the reform process would gather speed, as it was well known that Madagascar was currently in the throes of serious domestic difficulties which called for urgent changes. He also expressed the hope that all such changes would be effected on the basis of the provisions of the Covenant, which could perhaps be included in the new legislation. The new Constitution would have everything to gain if the Covenant was strictly complied with, and if its provisions were to be declared directly applicable in Madagascar.

34. With regard to the measures adopted to ensure the independence of the judiciary, the replies provided by the representative of Madagascar were not sufficient; some explanation was needed of how the independence of the judiciary was currently guaranteed and whether the conventional means available for doing so (irremovability, security of remuneration, independence of the body that appointed magistrates, etc.) existed within the present system or were provided for in the reforms to the judicial system.

35. He endorsed the questions raised by Mr. Fodor about the Supreme Court, and asked what was meant by the assertion in paragraph 32 of the report, concerning measures aimed at ensuring "the participation of citizens in ... the judicial system and in keeping check on it". It was easy to understand that, through their elected representatives in Parliament, citizens could have laws adopted relating to justice, but it was difficult to see how they could take part in "keeping check on" justice. He was inclined to view such monitoring rather as a danger than a safeguard. He was also concerned by the

mixed system whereby professional judges and co-magistrates were associated, and he asked who appointed the co-magistrates and what their powers were.

36. Lastly, the Committee was awaiting details of the action taken by the Government of Madagascar to follow up the findings of violations of some articles of the Covenant arrived at by the Committee after consideration of a number of communications.

37. Mr. PRADO VALLEJO said he was confident that a constructive dialogue would take place between the Malagasy delegation and the Committee. The delay in submitting the report would perhaps actually make it possible to form a more up-to-date picture of the situation.

38. He expressed concern about the manner in which the separation of power was guaranteed in Madagascar, as the report indicated that the Executive could legislate; the Council of Ministers could adopt decrees, and the President of the Republic could also take decisions. As the People's National Assembly was empowered to legislate, there were several legislative bodies, a situation which called for further explanation; the manner in which such a system allowed citizens fully to exercise their rights was not very clear.

39. Details would also be welcome on the reform of the Supreme Court, mentioned in paragraph 54 of the report.

40. He noted that there were a number of special courts in Madagascar, as well as circuit courts, and he asked what the characteristics of each of them were and how they operated. He thought that, with so many jurisdictions, it might be difficult to preserve the unity of justice, on the one hand, and the separation of powers, on the other. Lastly, again with regard to justice, no mention was made in the report of the remedies available to citizens who considered they had been injured by an act or decision of the courts.

41. He had been most interested to learn that the authorities had set up a special committee to consider the serious problems arising from the degradation of the environment, and he asked whether any measures had so far been adopted to remedy a situation that clearly infringed the rights of citizens.

42. Mr. MYULLERSON thanked the Malagasy delegation for its presentation of its report, which had moreover been prepared in accordance with the Committee's guidelines, and contained statistics and concrete examples.

43. Many countries possessed a single-party system; some were considering adopting the multi-party system, while others, on the contrary, were not prepared to do so. Paragraph 31 of the report (CCPR/C/28/Add.13) stated that the Democratic Republic of Madagascar had not moved towards a single-party system. He asked why the drafters of the report had felt the need to underscore that fact and whether the sentence in question was of special significance.

44. Paragraph 75 of the report cited article 12 of the Constitution, pursuant to which the State ensured equality by "guaranteeing the unity ... of the socialist legal system". As he himself came from a country where, until

"restructuring", the prime objective had been to build a socialist society, he asked what was the meaning of that article of the Constitution and whether there were plans to include similar provision in the next Constitution.

45. While the representative of Madagascar had said in his introduction that there were no political prisoners in Madagascar, paragraph 137 of the report contained details of the "special status" that applied to "political prisoners"; there was thus reason to ask whether or not there were political detainees in Malagasy prisons and if so, which prisoners came into that category.

46. Mrs. CHANET welcomed the fact that the Committee was considering the report of Madagascar (CCPR/C/28/Add.13) at a time when the country was in the midst of change. Recent events showed that an active opposition was developing and that solutions were being sought; that was particularly true in respect of the Constitution, whose revision was being demanded by huge sectors of the population, and had, in fact, begun. In view of the current period of transformation, it was important for the Committee be able to express its views and to reflect, together with the Malagasy delegation, on the direction that might be taken by the new Constitution.

47. She endorsed all the earlier remarks concerning judicial organization, in particular those on the appointment of judges under the current system, and, where it was known, under the proposed new system. However, she failed to understand why so many courts and special procedures were necessary. The ordinary courts should be able to try offences such as cattle theft (para. 104 (c) of the report). The multiplicity of special courts was unlikely to guarantee the independence of courts. The monitoring by the Supreme Court of lower courts was particularly extensive and gave grounds for concern, as the forms it took - as described in paragraphs 165 et seq. - showed that what might appear to be a supervisory function over the lawfulness and proper functioning of jurisdictions in fact became monitoring of a substantive nature. She asked whether the system would be maintained after the reform. Furthermore, the concept of equity mentioned in paragraph 163 required clarification.

48. Mr. ANDO stressed that the report deserved credit for having been prepared in accordance with the Committee's guidelines and for providing information on actual practice and conditions.

49. He would limit his comments to the functions of the Constitutional High Court, which were dealt with in paragraphs 22 to 31 of the report. He regretted that the report's authors had contented themselves with stating that, in respect of elect disputes (para. 22 (c)) the High Court issued 206 orders concerning general elections and four concerning presidential elections, without specifying the nature of the cases brought before it in that area; accordingly, he requested details of the nature of the cases involving presidential elections, of the decisions taken on them and of any consequences of the four orders issued.

50. Mr. WENNERGREN said he had read the report of Madagascar, which contained very valuable specific information, with great interest.

51. He had some doubts as to the functions of the monitoring body established within the Supreme Court, as they seemed to him to be those of an administrative rather than a judicial body. In paragraph 37 of the report for example, it was stated that the supervisory body "checks on observance by the appeals and other courts of the texts governing their organization and on compliance with due process of law and professional and ethical obligations", a responsibility that was far from common in the case of a Supreme Court. It was likely that, as part of the judicial reform under way in Madagascar, the system had undergone or would undergo an evaluation in order to identify the drawbacks and advantages of having such a supervisory body, in particular with regard to efforts to enhance the independence and effectiveness of the courts. Information on the planned changes and the results of any assessment would be highly appreciated.

52. Mr. RADAODY RAKOTONDRAVAO (Madagascar) said that the questions put by the various members of the Committee showed that it had been worthwhile for the Malagasy delegation to present document CCPR/C/28/Add.13 to the Committee, in particular at such a trying time for Madgascar. It was certainly valuable to reflect together and to attempt to assess the past, the present and prospects for the future.

53. In recent years, Madagascar had set out on an authentic forced march in order to adjust to the rapidly changing international environment. In spite of the scale of the difficulties, the Government had held its course, and legislative activity had been marked by a degree of stability and continuity.

54. Moreover, it was necessary to point out that the commitments made by the Malagasy authorities to the major international financial and monetary institutions had given rise to serious problems. The structural adjustments, the successive devaluations of the currency, the complete upheaval in the economic and monetary situation, foreign trade problems and the slide of a considerable proportion of Madagascar's population towards absolute poverty were factors that had exerted heavy pressure on the Government. Nevertheless, the Government had managed to remain true to the democratic spirit that characterized the 1975 Constitution. All the planned elections had taken place freely, an occurence, quite rare in a third world country. In that connection, he pointed out that the President of the Democratic Republic of Madagascar had twice been re-elected by universal suffrage. Moreover, many candidates had stood at all the elections, and no single party had ever monopolized the Government. In Madagascar, there were many political parties that jealously guarded their independence. In 1975, with a view to effectiveness and solidarity, a National Front for the Defence of the Revolution had been set up, in an attempt to unify the main political parties. It had, moreover, been the only such venture in Madagascar. The seven main parties that comprised the Front had attempted, as best they could, to work together; disputes between the various parties had occasionally been very heated. The Front included parties as diverse as the Christian Democratic Party and Marxist-Leninist, or even libertarian groups. Coexistence between them had posed many problems, which had given rise to the idea of a fundamental institutional review. The effectiveness of the opposition parties currently left much to be desired on account of internal dissension that ran deeper than their differences with the Government. However, that situation was a sign of normal and healthy politics.

55. He pointed out that document CCPR/C/28/Add.13 covered a period of experiment that had begun in the middle of the 1970s with the adoption of a relatively new and original legal system; the system had guaranteed a degree of stability for the country, but was no longer suited to current circumstances and in the view of a majority of politicians of all shades of opinion was no longer in keeping with the way the world was evolving. He recalled that the Government had itself taken the initiative of proposing a revision of the Constitution. It had, for example, proposed the repeal of article 108, concerning the socialist nature of the State. He also recalled that, at the time when the Constitution had been drawn up, Madagascar had been passing through a truly revolutionary period. The Government at that time had assumed power after a period of popular unrest that had left hundreds of people dead and had been followed by harsh repression and the establishment of a military government for a given period with a view to maintaining order. It was only in 1975 that normal institutions had been set up through the ballot box.

56. Since then, things had evolved, the world had changed considerably and the balance of power was no longer the same. Whatever text was finally adopted, it was already certain that the new constitution would be very simple and neutral. It would essentially take into account the results of the past 15 years' practice. Furthermore, all Malagasy institutions were due to undergo change and the overall organization of the legal system and the separation of the executive and the legislative braches were currently being redefined. In the circumstances, the replies by the Malagasy delegation to the Committee's questions could only be theoretical, and relate to elements that were already part of Madagascar's history.

57. The repercussions of the structural adjustments that had, in a manner of speaking, been imposed on Madagascar by the International Monetary Fund and the World Bank, were essentially of an economic nature: poverty had increased, there had been a resurgence of crime, a rise in unemployment, a cut-back in welfare policies and a decline in school attendance. Within a few years, Madagascar would certainly have returned to the ranks of the world's least developed countries. Its GNP had fallen by half; the price of the main source of export income - coffee - had fallen by 200 per cent since 1975 and external debt servicing represented an astronomical proportion of national income. Despite all those difficulties, the Government had been anxious to increase the population's democratic participation in the various national institutions to such an extent that those institutions, as a whole, were currently being called into question. The Government of Madagascar hoped that, by working with the population, it would find a means of tackling an increasingly serious economic situation. Furthermore, with regard to the implementation of the provisions of the Covenant, the Government had not adopted any special or emergency measures, and during all those years had never shirked its obligations.

58. In reply to a question on referral to the Constitutional High Court, he said that the new institution that would replace that body would be imbued with a completely different spirit. The President of the Republic, the People's National Assembly, political parties and even individuals had

hitherto been able to refer matters to the Constitutional High Court, which could moreover itself decide to take up a case if it believed, for example, that the Constitution had been violated.

59. As far as the "Charter Constitution bloc" was concerned, the question was no longer relevant as none of the drafts of the new constitution provided for that concept, which would certainly be abandoned. It was necessary to understand that the Charter of the Malagasy Socialist Revolution was a historical document that defined a programme and principles whose socialist, and even populist connotation was linked to traditional organizations within Malagasy society - the decentralized communities - that constituted a relatively cumbersome and inefficient form of administration. The whole population of Madagascar was united in demanding a return to a simplified form of administration. The draft preamble to the new constitution submitted by the Government referred to the Universal Declaration of Human Rights. Even if the proposed reforms to the Constitution made by the Government were contested by the opposition, all political parties were certain to accept that reference to the Universal Declaration and would agree on the fundamental legal principles of protection for civil and political rights.

60. The situation with regard to the order of precedence of legislation, would also change considerably. While there had previously been a presidential regime under which the Head of State possessed very extensive powers, the current trend seemed to be towards the establishment of an Executive responsible to Parliament, and a distribution of powers that would certainly be very different from the current one. However, that question had not yet been settled. He nevertheless pointed out that the Government of Madagascar had never made use of the possibility of bypassing the People's National Assembly, to which it had always submitted ordinances adopted by the President of the Republic, for ratification.

61. Special courts had not been the creation of the 1975 Constitution. The establishment of the Special Criminal Court, for example, dated from the colonial period. It had to be understood that cattle theft, with which the Court dealt, was a menace and a source of criminality and delinquency that had been faced by every Government. Cattle theft had at first been considered a national sport in the south of Madagascar, before becoming a profitable activity then a source of considerable wealth for what could only be described as gangsters, who had transformed the activity into a full-scale industry. It had led to the creation of a parallel economy, and even of parallel powers in certain regions of Madagascar. Spontaneous agreements had been drawn up between certain decentralized communities seeking a means of protection, giving rise to full-scale tribal and regional wars. The State had set up special courts in order to deal with the problem. History had nevertheless shown that none of the measures adopted had succeeded in putting an end to that type of banditry. No doubt the ordinary courts and the existing legal arsenal should have been sufficient to combat the scourge, but in the face of a problem that was at one and the same time sociological, ecological, economic and political, the Government had attempted to create a deep impression by setting up the special courts. The measure had been a failure, and it was to be hoped that those courts would be done away with under the new judicial structure.

62. The Special Economic Court had been set up in response to the development of the black market and of corruption within a shortage-plagued economy. In that case too, the essential objective of setting up a special court had been psychological. Currently, most people considered that such a mechanism was not sufficient to keep in check and solve fundamental economic and political problems. The Special Economic Court should also disappear in the reorganization of the legal system.

63. The circuit courts initially represented an attempt to narrow the gap between citizens and the courts. As Madagascar's territory was very extensive and the vast majority of its population rural, it had been customary since time immemorial for judges to travel throughout the countryside. Consequently, the circuit courts were not special courts but, in a manner of speaking, itinerant sessions of the ordinary courts that constituted a form of geographical decentralization of justice.

64. In reply to the question from a member of the Committee relating to article 11 of Ordinance No. 82-019 (see report, paras. 162 and 163) he said that the article had indeed been challenged by many Malagasy legislators. Under the ongoing reform of the legal system, the article had been reconsidered and it was planned purely and simply to drop it. It should also be noted that the article had been adopted prior to the reform of the Supreme Court, at a time when the supervisory machinery provided by that institution did not yet exist.

65. He pointed out that Malagasy legislation still contained many very old laws. Efforts were currently being made to update and codify legislation. For example, for the drafting of a Civil Code, laws had been subjected to a sorting process that was not yet complete. Some laws had fallen into disuse, others were being eliminated as anti-constitutional. In that connection, he noted that accession to the Covenant had considerably assisted the legislative authorities in rationalizing Malagasy legislation in such fields as matrimonial law, the equality of the sexes, etc. He drew attention to the fact that the Centre for Human Rights could greatly assist the Malagasy authorities in that respect, in particular by helping them to train jurists and to improve the competence of those carrying out the lengthy and painstaking task of reforming the legal system.

66. The Constitutional High Court, which had indeed been very active in the past, was shortly to disappear.

67. In conclusion, he concurred as to the need to carry out an assessment of the results attained during the last 15 years. In 1975, Madagascar had set out along a highly original path; it had carried out experiments and had made a number of modifications to the system over the years. The Government was now attempting to build, upon what it hoped were sounder foundations, an edifice for the years to come.

68. He assured the members of the Committee that his country's authorities would take due note of their comments and suggestions, which echoed the debate under way in Madagascar. Moreover, the Committee's assistance would be welcome, if necessary, to help Madagascar through the coming years, which promised to be extremely difficult. His delegation was aware that the new

situation emerging in the country, and the manifold changes convulsing Madagascar's politics, its economy and society made it necessary to submit a further periodic report to the Committee. The introduction of the future institutions and the country's new organization would however take some time, and it would not be possible to submit the new report for several months, or even years. In the meantime, he was prepared to provide the Committee with any additional clarifications and details it might require.

69. Mr. SERRANO CALDERA welcomed the Malagasy delegation. His questions concerned two points: first, with regard to the Constitutional High Court, it was his understanding that the constitutional review process would drastically affect most of Madagascar's institutions and that the High Court would not be immune from those transformations. It was apparent from the report (CCPR/C/28/Add.13) that the court monitored the constitutionality of bills and regulations, in terms of form, and provided individuals with the possibility of a posteriori control. He wished to know whether individuals could claim that a law was unconstitutional even if they were not personally affected by it. He also inquired what would be the new legal guidelines defining the responsibilities of the Constitutional High Court under the new Constitution.

70. Secondly, with regard to the special courts, he had noted that other members of the Committee had expressed surprise at their very existence. In his view, there might be certain special circumstances that made it necessary to violate the principle of a single and exclusive jurisdiction, provided that as soon as circumstances allowed, the principle was restored. However, he had noted that the special courts in Madagascar represented a type of geographical decentralization of justice. He asked for information on the exact nature of those courts and why they were described as "special". Was their composition different from that of the ordinary courts and were they emergency courts? Did they operate in a special way and was any appeal possible against their decisions? Lastly, he asked if laws were applied in the same manner as in the ordinary courts.

71. Mrs. HIGGINS noted with satisfaction that the report of Madagascar (CCPR/C/28/Add.13) was extremely comprehensive and well organized and that the Government of Madagascar had demonstrated considerable frankness in presenting it. However, she considered that the 12-year interval between the submission of the initial and second periodic reports was far too long, and that the Committee could not accept the reason given to account for that delay, i.e. the period of profound political change through which the country was passing. The reason the Committee had adopted a decision on periodicity was precisely to ensure that political vicissitudes did not prevent the maintenance of a regular dialogue with States parties. Similarly, the Committee was not in the habit of allowing second periodic reports to stand as third reports, even if they were extremely complete, and in the case of Madagascar it was to be hoped that the third periodic report would be submitted within the prescribed time.

72. In connection with item I (d) of the list of issues to be taken up, she asked for detailed information on the case of the four detainees mentioned in the Committee's views, as no reply had ever been received to the Committee's questions in that respect.

73. The CHAIRMAN pointed out that the text of the views adopted by the Committee under the Optional Protocol had only very recently been transmitted to the Malagasy delegation.

74. Mr. RADAODY RAKOTONDRAVAO (Madagascar) said that in actual fact the question of the detainees mentioned by Mrs. Higgins had been considered definitively resolved for some years. One of the former plaintiffs was currently the senior member of the Supreme Council of the Revolution, i.e. the second most important person in the State, and the two South African pilots who had been detained in Madagascar had been released five or six years earlier. However, the lawyer who had been detained, then expelled from Madagascar six years earlier was currently in Paris, and continued to submit communications to the Committee. His delegation would provide further clarification on that point as soon as it possessed the necessary official information.

75. With regard to a question raised by Mr. Myullerson, the Malagasy delegation had stated that there had been no political prisoners in Madagascar for several months, which did not mean that there had not been any in the past and that there would not be any in the future, which was why there were still provisions that established a different status for political prisoners from that of ordinary prisoners.

76. In response to the concerns expressed by Mr. Serrano Caldera, it should be understood that the exact expression used in Madagascar was "outside hearing of the courts", which signified that they were in no way special courts, but courts that moved from one place to another to dispense justice, for example at market time, as had always been the custom in Madagascar, which was extremely extensive and possessed few magistrates. The courts were essentially courts of first instance, although the Constitutional High Court had itself travelled on occasion. In any event, the courts were composed of ordinary magistrates, followed normal procedure and implemented the country's ordinary laws.

II. Right of self-determination (article 1)

What is meant by "direct administration" in paragraph 62 of the report?

77. Mr. RADAODY RAKOTONDRAVAO (Madagascar) said that the question put in section II of the list of issues to be taken up required linguistic explanations. The expression "direct administration" was employed as a euphemism in Madagascar, or out of courtesy to designate the colonial administration imposed by the French in 1896, after the period of the protectorate, when Madagascar had been purely and simply annexed to France and administered directly as a colony. Thus, it was clear that, after 70 years of such administration, citizens had experienced difficulty in taking their own development in hand.

78. Mr. NDIAYE recalled that, like Madagascar, a number of African States had also inherited from the colonial period a highly centralized administrative system whose aim had been to standardize the management of the country and to deny ethnic or regional differences, a practice that lay at the root of many conflicts. He asked whether there were any highly diverse ethnic groups or

communities in Madagascar, and if so, whether the new decentralization policy was designed to take their particular characteristics into account to any extent and to reconcile the State with its various components.

79. With regard to relations between Madagascar and South Africa, he asked what had been the reaction of the Government of Madagascar to the fundamental changes introduced by the Government of South Africa, whose abandonment of its heinous policy of apartheid could justify reconciliation with countries in the subregion and contribute to the establishment of an extremely powerful development pole in South Africa.

80. Mrs. HIGGINS said she particularly appreciated the concept expressed in paragraph 60 of the report, according to which the authorities were "trustees of the people's prerogatives". However, she stressed that, in order to be entitled to assume such responsibility, the authorities should be truly representative of the people. It appeared that the most recent elections in Madagascar had drawn criticism and protests, for not having been completely fair and equitable. She asked whether new elections could be held in the near future. Moreover, she had noted that the representative of Madagascar had frequently spoken of the "former Constitution"; it was not clear whether the current Constitution was still in force, whether it had been amended and to what extent, or whether a completely new Constitution would shortly be promulgated.

81. Mr. SADI asked whether the right of self-determination was truly guaranteed; under article 12 of the Constitution, the State ensured the equality of all citizens by guaranteeing "unity of the social order and of the socialist legal system", which hardly seemed to allow the population the possibility of questioning or amending the status quo.

82. Mr. RADAODY RAKOTONDRAVAO (Madagascar) said, in reply to Mr. Ndiaye's question, that the colonial heritage had indeed posed many problems for Madagascar from independence up to 1975. Madagascar had first of all adopted a centralized administrative system, akin to the former colonial system, with prefectures, departments and cantons. That system had actually been set up principally by France, and the 1960 Malagasy Constitution had been completely drafted in France by French lawyers. Subsequently, the population had expressed dissatisfaction with the system, and in 1972 had reacted by rejecting outright all the existing institutions, thereby leading to the adoption of the 1975 Constitution. That Constitution had introduced decentralization and enhanced the role of the local communities, which had been given what could be regarded as their own elected parliament and government, in the shape of a popular council and an executive committee. The objective had been to avert tribalism and regionalism, as Madagascar used to be a feudal country composed of a variety of small kingdoms that had constantly been at war against one another until the unification of the country in the nineteenth century. Thus, in 1975, the objective had been to eliminate the vestiges of both the colonial administration and the feudal system by allowing the population itself to define its administrative organization, and each community had been provided with its own constitution or collective agreement. It had been necessary to solve the problem of the standardization of legislation by setting up a system for reviewing such agreements at each level; the higher communities were made responsible for

reviewing the conventions adopted by the lower communities, and the Constitutional High Court was responsible for registering the agreements and giving its opinion as to their constitutionality and compatibility with current legislation.

83. However, after 15 years, that fairly advanced form of self-determination, whose objective had been to preserve the special character and customs of each region, had given rise to sharp critism. It had proved difficult precisely to demarcate the boundaries of the jurisdiction of each community, particularly in towns; the population had gradually lost interest in the work, for which the elected representatives themselves had to take responsibility in the absence of paid officials; abuses and irregularities had been committed and women, in particular, had been obliged to take on a heavy burden of responsibility.

84. For that reason there were now two schools of thought: the first advocated the return to conventional centralization, while the second favoured greater decentralization that would lead to a form of federalism. All options were currently under review, and the experiment could prove valuable if it took place in a climate of tranquillity and cooperation, as was the Government's wish.

85. With regard to relations with South Africa, he said that Madagascar had initiated a bilateral process that may have surprised some circles. Madagascar had always defended the rights of the black populations of South Africa and southern Africa and had used all the means at its disposal to assist the national liberation movements, which it had provided with military, economic and material support. In 1975, in contrast with other countries in the region and with the "front line" States, which maintained normal relations with South Africa on account of their special - particularly in economic terms - situation, Madagascar had severed all relations with South Africa, a step that had created huge difficulties for it, and had continued to help the national liberation movements.

86. Fortunately, the situation had now changed, the African National Congress was playing its proper decisive role, and after having consulted it, Madagascar had decided to resume direct relations with South Africa. As a result, President de Klerk had paid an official visit to Madagascar, air links had been restored and trade between the two countries had resumed. However, Madagascar had not restored diplomatic relations with South Africa, pending a decision by the Organization of African Unity. The Government of Madagascar saw itself as a pioneer in that regard and hoped that the approach adopted by it would be valuable to those striving totally to dismantle the apartheid system and to set up a multiracial regime in South Africa.

87. In reply to the question put by Mrs. Higgins, he said that since 1975 a variety of electoral systems had been adopted successively in Madagascar, as no system had proved fully satisfactory. In 1989, the President of the Republic had been elected with 52 per cent of the votes cast, although his three opponents had calculated that, he had been elected by only 30 to 40 per cent of the electorate as the turnout for the elections had been between 60 and 65 per cent. As a result, the legitimacy of the election had been contested. The same problem had arisen at the time of the legislative

elections because, under the electoral system, parties not represented in a given constituency were not allowed to put up a candidate. However, most of the new parties were recently constituted groupings with few members and limited geographical representation. Consequently, they had been beaten in the legislative elections, and in Parliament the current majority was made up of a coalition of four parties of long-standing, with established social, geographical and political roots, against whom the new parties had clearly not been in a position to compete. For that reason, a debate had begun on a review of the electoral system; logically, fresh elections should be held, although the arrangements had not yet been finalized.

88. The so-called "former" Constitution was still in force, but the amendments recently made to more than 100 of its articles meant that it was practically a new text. For example, the amendment of article 108, which had given rise to a wide-ranging debate within the Government itself, had involved the deletion of the reference to "the socialist option" and, in general, draft amendments to the articles were designed to delete any ideological reference. It was true that the opposition considered those amendments, which were not yet final, as insufficient, but the fact remained that the Government's prime concern at the current time was to ensure that all draft amendments were worded neutrally.

89. The CHAIRMAN said that the Malagasy delegation could continue to reply to the questions of the members of the Committee at the following meeting.

The meeting rose at 1.05 p.m.